

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 2007

H.P. 1287

House of Representatives, June 1, 2023

An Act to Advance Self-determination for Wabanaki Nations

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT
Clerk

Presented by Speaker TALBOT ROSS of Portland.

Cosponsored by President JACKSON of Aroostook and

Representatives: ABDI of Lewiston, ANDREWS of Paris, ANKELES of Brunswick, ARFORD of Brunswick, BABIN of Fort Fairfield, BELL of Yarmouth, BOYER of Poland, BOYLE of Gorham, BRENNAN of Portland, CARMICHAEL of Greenbush, CLOUTIER of Lewiston, CLUCHEY of Bowdoinham, COLLINGS of Portland, COPELAND of Saco, CRAFTS of Newcastle, CRAVEN of Lewiston, CROCKETT of Portland, DANA of the Passamaquoddy Tribe, DHALAC of South Portland, DILL of Old Town, DODGE of Belfast, DOUDERA of Camden, EATON of Deer Isle, FAULKINGHAM of Winter Harbor, FAY of Raymond, GATTINE of Westbrook, GEIGER of Rockland, GERE of Kennebunkport, GOLEK of Harpswell, GRAHAM of North Yarmouth, GRAMLICH of Old Orchard Beach, HASENFUS of Readfield, HEPLER of Woolwich, HOBBS of Wells, JAUCH of Topsham, KESSLER of South Portland, KUHN of Falmouth, LAJOIE of Lewiston, LaROCHELLE of Augusta, LEE of Auburn, LOOKNER of Portland, MADIGAN of Waterville, MALON of Biddeford, MASTRACCIO of Sanford, MATHIESON of Kittery, MATLACK of St. George, MEYER of Eliot, MILLETT of Cape Elizabeth, MILLIKEN of Blue Hill, MONTELL of Gardiner, MOONEN of Portland, MORIARTY of Cumberland, MURPHY of Scarborough, O'CONNELL of Brewer, O'NEIL of Saco, OSHER of Orono, PAULHUS of Bath, PERRY of Calais, PERRY of Bangor, PLUECKER of Warren, PRINGLE of Windham, RANA of Bangor, RECKITT of South Portland, RIELLY of Westbrook, RISEMAN of Harrison, ROBERTS of South Berwick, ROEDER of Bangor, RUNTE of York, RUSSELL of Verona Island, SACHS of Freeport, SALISBURY of Westbrook, SARGENT of York, SAYRE of Kennebunk, SHAGOURY of Hallowell, SHAW of Auburn, SHEEHAN of Biddeford, SKOLD of Portland, STOVER of Boothbay, STROUT of Harrington, SUPICA of Bangor, TERRY of Gorham, THERIAULT of Fort Kent, WARREN of Scarborough, WHITE of Waterville, WILLIAMS of Bar Harbor, ZAGER of Portland, ZEIGLER of Montville, Senators: BAILEY of York, BEEBE-CENTER of Knox, BENNETT of Oxford, BRAKEY of Androscoggin, BRENNER of Cumberland, CARNEY of Cumberland, CHIPMAN of Cumberland, CURRY of Waldo, DAUGHTRY of Cumberland, DUSON of Cumberland, GROHOSKI of Hancock, HICKMAN of Kennebec, MOORE of Washington, PIERCE of Cumberland, RAFFERTY of York, RENY of Lincoln, ROTUNDO of Androscoggin, TIPPING of Penobscot, VITELLI of Sagadahoc.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **CONCEPT DRAFT**

3 **SUMMARY**

4 This bill is a concept draft pursuant to Joint Rule 208.

5 This bill proposes to make substantial changes to the Maine Indian Claims Settlement
6 Implementing Act to address some of the consensus recommendations of the Task Force
7 on Changes to the Maine Indian Claims Settlement Implementing Act, referred to in this
8 summary as "the task force," and make other changes regarding the Maine Indian Claims
9 Settlement Implementing Act. The task force's report was released on January 14, 2020
10 and is available online at <http://legislature.maine.gov/maine-indian-claims-tf>. In this
11 summary, the Maine Revised Statutes, Title 30, chapter 601, which is titled AN ACT to
12 Implement the Maine Indian Claims Settlement, enacted by Public Law 1979, chapter 732,
13 is referred to as "the Maine Implementing Act" and the federal Maine Indian Claims
14 Settlement Act of 1980, Public Law 96-420, formerly codified at 25 United States Code,
15 Sections 1721 to 1735, is referred to as "the federal Settlement Act." The federal Settlement
16 Act ratified the Maine Implementing Act, and both have an effective date of October 10,
17 1980.

18 The purpose of the reconsideration and rewriting of the Maine Implementing Act
19 would be to establish that the Passamaquoddy Tribe, the Penobscot Nation, the Houlton
20 Band of Maliseet Indians and the Mi'kmaq Nation have the same rights to self-
21 determination as other federally recognized Indian tribes within the United States. This
22 bill would make changes to the Maine Implementing Act to restore back to the tribes many
23 of the rights, privileges, powers, duties and immunities enjoyed by other federally
24 recognized Indian tribes within the United States, which were restricted by the Maine
25 Implementing Act. This would be a significant change from the current law, which
26 provides the State with significant authority over Indian affairs. To carry out this
27 significant change, many provisions of Title 30, chapter 601 would be repealed or amended
28 to recognize that federal Indian law governs the rights, privileges, powers, duties and
29 immunities of the tribe, nations and band.

30 Under the bill, except as otherwise specified in the Maine Implementing Act, federal
31 Indian law would apply with regard to the rights, privileges, powers, duties and immunities
32 of the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians
33 and the Mi'kmaq Nation. "Federal Indian law" is defined for this summary to mean the
34 United States Constitution and all generally applicable federal statutes, regulations and
35 common law and case law interpreting, implementing, applying or enforcing those federal
36 laws and regulations, and subsequent amendments thereto, relating to the rights, status,
37 privileges, powers, duties and immunities of federally recognized Indian tribes and their
38 members and land or other natural resources within the United States. This definition
39 explicitly recognizes that federal Indian law is not static, but evolves as federal common
40 law develops, federal laws are passed and amended and as federal courts interpret the
41 relevant statutes and regulations and their application to federally recognized Indian tribes,
42 nations, bands and other groups.

1 This bill would incorporate within the Maine Implementing Act the definition of
2 "Houlton Band Trust Land" from the federal Houlton Band of Maliseet Indians
3 Supplementary Claims Settlement Act of 1986.

4 This bill would define "Mi'kmaq Nation Trust Land" to include land or other natural
5 resources acquired by the United States Secretary of the Interior in trust for the Mi'kmaq
6 Nation pursuant to federal Aroostook Band of Micmacs Settlement Act.

7 This bill would define "Indian territory or trust land" to include, with respect to the
8 Passamaquoddy Tribe and the Penobscot Nation, the tribe's or nation's Indian territory, with
9 respect to the Houlton Band of Maliseet Indians, Houlton Band Trust Land, and with
10 respect to the Mi'kmaq Nation, Mi'kmaq Nation Trust Land. This phrase is used throughout
11 the bill to describe the lands over which the Passamaquoddy Tribe, the Penobscot Nation,
12 the Houlton Band of Maliseet Indians and the Mi'kmaq Nation may exercise rights,
13 privileges, powers, duties and immunities similar to those of other federally recognized
14 Indian tribes within the United States.

15 This bill would restructure the procedures for addition of new land to tribal territories.
16 The procedures required would depend upon the location of the land and the time of
17 acquisition.

18 This bill would eliminate the language in the Maine Implementing Act regarding
19 takings of tribal land for public use under state law.

20 This bill would provide that the Passamaquoddy Tribe, the Penobscot Nation, the
21 Houlton Band of Maliseet Indians and the Mi'kmaq Nation, as well as their officers and
22 employees, are immune from suit to the same extent as other federally recognized Indian
23 tribes and their officers and employees under federal Indian law.

24 The Maine Implementing Act currently limits the criminal jurisdiction of the
25 Passamaquoddy Tribal Court and the Penobscot Nation Tribal Court as well as the potential
26 criminal jurisdiction of the Houlton Band of Maliseet Indians Tribal Court and the Mi'kmaq
27 Nation Tribal Court. Federal Indian law provides broader jurisdiction for tribal courts. This
28 bill would repeal most of the state limitations and recognize and adopt most of federal
29 Indian law, including the Indian Civil Rights Act of 1968, the Tribal Law and Order Act of
30 2010, the tribal provisions of the Violence Against Women Act and other federal laws
31 addressing tribal court jurisdiction and the obligations of the tribal courts. This bill would
32 restore to the Passamaquoddy Tribal Court, the Penobscot Nation Tribal Court, the Houlton
33 Band of Maliseet Indians Tribal Court and the Mi'kmaq Nation Tribal Court criminal
34 jurisdiction over Indians and recognize the courts' authority to impose the maximum
35 penalties other tribal courts are authorized to impose under the federal Tribal Law and
36 Order Act of 2010, as long as the due process protections required by that Act are observed.

37 This bill would amend state law to recognize tribal court jurisdiction, concurrent with
38 the state courts, over offenses committed on tribal lands by Indian defendants against non-
39 Indian victims, subject to the maximum penalty provisions and due process requirements
40 of the federal Tribal Law and Order Act of 2010.

41 This bill would retain current law providing that the exclusive authority of the
42 Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and
43 the Mi'kmaq Nation to exercise criminal jurisdiction over Indians on tribal lands remains
44 at the discretion of the tribe, nations and band. To the extent that the tribe, nations or band

1 does not exercise, or terminates its exercise of, exclusive criminal jurisdiction, the State
2 would have exclusive jurisdiction over those matters.

3 This bill would provide that, when the tribal courts of the Passamaquoddy Tribe, the
4 Penobscot Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation exercise
5 exclusive or concurrent criminal jurisdiction, the definitions of the criminal offenses and
6 the punishments applicable to those criminal offenses are governed by state law, except
7 that the punishments imposed by a tribal court may not exceed the maximum punishments
8 that a tribal court may impose under 25 United States Code, Section 1302(a)(7).

9 This bill would recognize federal Indian law regarding the exclusive jurisdiction of
10 tribes to regulate fishing and hunting by tribal citizens of all federally recognized Indian
11 tribes on tribal lands. This bill would amend the Maine Implementing Act to restore and
12 affirm the exclusive jurisdiction of tribes to regulate fishing and hunting by nontribal
13 citizens on tribal lands but would not cede to the State any authority of the Maine Indian
14 Tribal-State Commission to regulate fishing on boundary waters under current law.

15 This bill would relinquish the State's jurisdiction with respect to the regulation of
16 fishing and hunting by both tribal and nontribal citizens on tribal lands. The State, solely
17 for conservation purposes, would be allowed to regulate tribal members engaged in such
18 activities off tribal lands to the extent permitted under general principles of federal Indian
19 law and in a manner consistent with reserved tribal treaty rights.

20 This bill would amend state law to restore to the Passamaquoddy Tribe, the Penobscot
21 Nation, the Houlton Band of Maliseet Indians and the Mi'kmaq Nation the exclusive
22 authority to exercise civil legislative jurisdiction over Indians on tribal lands and the
23 concurrent authority to exercise civil legislative jurisdiction over non-Indians on tribal
24 lands, including in the area of taxation, as provided by federal Indian law. This bill would
25 amend state law to restore to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton
26 Band of Maliseet Indians and the Mi'kmaq Nation the exclusive authority to exercise civil
27 adjudicatory jurisdiction over Indians on tribal lands and the concurrent authority to
28 exercise civil adjudicatory jurisdiction over non-Indians on tribal lands, as provided by
29 federal Indian law.

30 This bill would provide that, notwithstanding any provision of the Maine Implementing
31 Act to the contrary, the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of
32 Maliseet Indians and the Mi'kmaq Nation may conduct gaming activities only in
33 accordance with state law and may not conduct gaming activities under the authority of the
34 federal Indian Gaming Regulatory Act or under any regulations thereunder promulgated
35 by the chair of the National Indian Gaming Commission or its successor organization.

36 This bill would take effect 120 days after adjournment of the session during which it
37 was enacted only if, within 90 days after adjournment of that session, the Secretary of State
38 receives written certification from the Joint Tribal Council of the Passamaquoddy Tribe
39 that the tribe has agreed to its provisions; the Governor and the Council of the Penobscot
40 Nation that the nation has agreed to its provisions; the Houlton Band Council of the Houlton
41 Band of Maliseet Indians that the band has agreed to its provisions; and the Mi'kmaq Nation
42 Tribal Council that the nation has agreed to its provisions.

43 This bill would repeal or repeal and replace each provision of the Maine Implementing
44 Act that was enacted by Public Law 1981, chapter 675 and provide that, if the Houlton
45 Band Council of the Houlton Band of Maliseet Indians certifies its agreement to the

1 provisions of this legislation, upon such certification each provision of this legislation
2 constitutes a jurisdictional agreement between the State and the Houlton Band of Maliseet
3 Indians for purposes of Section 6(e)(2) of the federal Settlement Act but would not
4 constitute an agreement by the Houlton Band of Maliseet Indians that the contingencies of
5 Public Law 1981, chapter 675 were met or that the provisions of Public Law 1981, chapter
6 675 ever took effect.

7 This bill would repeal or repeal and replace each provision of Title 30, chapter 603 that
8 was enacted by Public Law 1989, chapter 148 and provide that, if the Tribal Council of the
9 Mi'kmaq Nation certifies its agreement to the provisions of this legislation, upon such
10 certification each provision of this legislation constitutes a jurisdictional agreement
11 between the State and the Mi'kmaq Nation for purposes of Section 6(d) of the federal
12 Aroostook Band of Micmacs Settlement Act but would not constitute an agreement by the
13 Mi'kmaq Nation that the contingencies of Public Law 1989, chapter 148 were met or that
14 the provisions of Public Law 1989, chapter 148 ever took effect.